

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**

<b>Appeal Decision:</b>	Denied	<b>Appeal Number:</b>	1601813
<b>Decision Date:</b>	5/12	<b>Hearing Date:</b>	03/10/2016
<b>Hearing Officer:</b>	Christopher Jones	<b>Record Open to:</b>	04/18/2016

**Appellant Representative:**

**MassHealth Representative:**  
Olga Nizamova



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

# APPEAL DECISION

<b>Appeal Decision:</b>	Denied	<b>Issue:</b>	LTC – SMNA; PPA
<b>Decision Date:</b>	5/12	<b>Hearing Date:</b>	03/10/2016
<b>MassHealth Rep.:</b>	Olga Nizamova	<b>Appellant Rep.:</b>	
<b>Hearing Location:</b>	Tewksbury MassHealth Enrollment Center	<b>Aid Pending:</b>	No

## Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

## Jurisdiction

Through a notice dated January 22, 2016, MassHealth approved the appellant's application for MassHealth long-term care benefits and set a patient paid amount of \$4,100.95. Exhibit 2; 130 CMR 520.017. The appellant filed this appeal in a timely manner on February 3, 2016. Exhibit 2; 130 CMR 610.015(B). Limitation of assistance is valid grounds for appeal. 130 CMR 610.032.

## Action Taken by MassHealth

MassHealth approved the appellant for long-term care benefits and established a patient paid amount of \$4,100.95.

## Issue

The appeal issue is whether the appellant's community spouse is entitled to an increase the minimum-monthly-maintenance-needs allowance based upon significant financial duress arising from exceptional circumstances pursuant to 130 CMR 520.017(D).

## Summary of Evidence

The MassHealth representative appeared at the hearing and testified that the appellant entered the nursing facility on December 15, 2015. She was approved for the requested benefits start date with a patient paid amount (“PPA”) of \$4,100.95.

MassHealth submitted a Maintenance Needs Allowance worksheet, showing how the Spouse in Home Allowance is derived. Finding the Minimum-Monthly-Maintenance-Needs Allowance (“MMMNA”) is the first step toward determining the Spousal Maintenance Needs Deduction (“SMNA”):<sup>1</sup>

Mortgage or Rent	\$1,868.00
Taxes and Insurance	\$ 377.00
Standard Utility Expenses	\$ 620.00
<hr/>	
<b>Total Shelter Expenses</b>	<b>\$2,865.00</b>
Shelter Expense Standard	-\$ 598.00
<hr/>	
<b>Excess Shelter Allowance</b>	<b>\$ 2,267.00</b>

A Standard Maintenance Allowance of \$1,992.00 is then added to the Excess Shelter Allowance, to determine the appellant’s spouse’s MMMNA of \$4,259.00. The MMMNA is then compared to a Maximum-Monthly-Maintenance-Needs Amount<sup>2</sup> of \$2,980.50, and MassHealth uses whichever number is lower. MassHealth then subtracts the community spouse’s income from the lower of the MMMNA or the regulatory cap of \$2,980.50, and the result is the SMNA. For the community spouse, MassHealth arrived at the SMNA of \$0.00 by using the regulatory cap of \$2,980.50 and subtracting the community spouse’s gross pension and social security income of \$3,390.90. See Exhibit 3.

The appellant’s representative testified that the number used by MassHealth to determine the appellant’s rent or mortgage was too low, because it did not include a second mortgage of about \$240 on the appellant’s community home. She was further concerned that MassHealth was not considering the fact that each the appellant and the community spouse had their own car and

---

<sup>1</sup> In testimony and on its forms, MassHealth generally refers to a spousal “allowance.” See Exhibit 4. However, the regulations almost universally refer to a “Spousal Maintenance Needs Deduction.” See 130 CMR 520.017(D)(2), 520.026(B). They are the same, and this decision will use SMNA to refer to the amount the community spouse may keep of the institutionalized spouse’s income.

<sup>2</sup> By regulation, MassHealth must use the capped Maximum-Monthly-Maintenance-Needs Amount. Only a hearing officer has the authority to award more than the regulatory cap. See 130 CMR 520.017, 520.026. Generally, MassHealth only refers to the “MMMNA” when it is referring to lesser of the community spouses Minimum-Monthly Maintenance-Needs or the regulatory capped maximum in determining the SMNA. This decision will solely use MMMNA to refer to the Minimum-Monthly-Maintenance-Needs Allowance, not the maximum cap used by the agency.

attributable expenses. The MassHealth representative explained that MassHealth is required to use a Standard Utility Expenses that is determined by the federal government based upon whether or not the community spouse pays for their own utilities. Because he does, MassHealth uses \$620. Similarly, the rest of the community spouse's expected expenses are generally accounted for in the Federal Standard Maintenance Allowance. MassHealth also explained that it is only allowed to consider the community spouse's expenses, so the appellant's car expenses would not even be considered. The MassHealth representative said that she could probably add on the second mortgage payment, but that it would not affect MassHealth's decision since the regulatory maximum was used in place of the MMMNA.

The appellant's representative asked why the appellant was not entitled to a housing allowance, since the appellant was a short-term resident. The MassHealth representative testified that the housing maintenance allowance is only allowed for single residents, the SMNA is used to support the community home when the community spouse continues to reside there. The appeal representative also explained that, because there is no SMNA, the community spouse is required to pay part of his income to cover the portion of his wife's PPA that does not consider the appellant's withheld taxes. The MassHealth representative testified that, as a nursing facility resident, the appellant can have her taxes stopped; otherwise she will receive a tax credit for the taxes paid while she was in the facility when she files her taxes. The appellant's representative testified that the appellant is determined to go home, so she refuses to stop payment on her taxes, since she would just be required to re-start them.

The appellant's representative testified that in order for the appellant to return home, her husband will need to have a ramp installed in their house and they would need to buy a sit-to-stand. She asked if the record could be left open for evidence of these expenses to be submitted. She was informed that the MMMNA can only be adjusted for exceptional medical circumstances affecting the community spouse, but the record was left open. The day after the record closed, the appellant's representative emailed to say that there had still been no expenses incurred with regard to building a ramp, and she confirmed that the ramp's cost would be incurred for the benefit of the institutionalized spouse, not the community spouse.

## **Findings of Fact**

Based on a preponderance of the evidence, I find the following:

1. Through a notice dated January 22, 2016, MassHealth approved the appellant's application for MassHealth long-term care benefits and set a patient paid amount of \$4,100.95.
2. The appellant filed this appeal in a timely manner on February 3, 2016.
3. The appellant's gross income is \$4,206.02, and her community spouse has gross income of \$3,390.90. The community spouse's income exceeds the regulatory cap on the monthly maintenance needs allowance for a community spouse of \$2,980.50.

4. The record was left open for the appellant to submit evidence of costs incurred to build a ramp to the appellant's community home.
5. No evidence was submitted regarding financial duress arising from exceptional medical circumstances relating to the community spouse.

## Analysis and Conclusions of Law

To determine a member's PPA, MassHealth regulations require that deductions be made from the member's income "in the following order: a personal-needs allowance; a spousal-maintenance-needs allowance; a family-maintenance-needs allowance for qualified family members; a home-maintenance allowance; and health-care coverage and incurred medical and remedial-care expenses." 130 CMR 520.026. The amount for the personal-needs allowance is set at \$72.80, and the family-maintenance-needs allowance only applies where a member has dependent children, siblings, or parents living in their former home. 130 CMR 520.026(C). The home maintenance needs allowance is only allowed where "a single individual, with no eligible dependents in the home, is likely to return home within six months after the month of admission." 130 CMR 520.026(D).

The spousal-maintenance-needs allowance is intended to allow a community spouse to keep some of the institutionalized spouse's income to pay for necessities. The SMNA "is the amount by which the minimum-monthly-maintenance-needs allowance exceeds the community spouse's gross income." 130 CMR 520.026(B). As the MassHealth representative testified at the hearing, MassHealth determines the MMMNA by adding a federal standard maintenance allowance to the difference between the community spouse's actual costs of shelter, including a standard amount for utility costs, and the standard shelter expense. See 130 CMR 520.026(B)(1). However, the "maximum-monthly-maintenance-needs allowance" caps the amount MassHealth may use to cover community-spousal expenses unless it is increased through a fair-hearing decision in accordance with 130 CMR 520.017(D). See 130 CMR 520.026(B)(2).

(D) Adjustment to the Minimum-Monthly-Maintenance-Needs Allowance Due to Exceptional Circumstances. After the institutionalized spouse has received notice of either approval or denial for MassHealth Standard, either spouse may appeal to the Office of Medicaid Board of Hearings the calculation of income available to the community spouse and request an increase in the MMMNA,<sup>[3]</sup> based on exceptional circumstances, as defined in 130 CMR 520.017(D)(1).

(1) Exceptional Circumstances. Exceptional circumstances exist when there

---

<sup>3</sup> As noted above, 130 CMR 520.017(C)(2) defines the minimum-monthly-maintenance-needs allowance as the MMMNA. Nonetheless, it is clear that the use of MMMNA in 130 CMR 520.017(D) is intended to be the regulatory maximum on the monthly-maintenance-needs-allowance referenced in 520.026. This interpretation is supported by the limitation in 130 CMR 520.017(C)(2) on a hearing officer's power to allow the community spouse to keep more of the institutionalized spouse's income than their actual expenses would require as established through the **minimum**-monthly-maintenance-needs-allowance calculation.

are circumstances other than those already taken into account in establishing the maintenance standards for the community spouse under 130 CMR 520.026(B) and these circumstances result in **significant financial duress**. Since the federal standards used in calculating the MMMNA cover such necessities as food, shelter, clothing, and utilities, **exceptional circumstances are limited to those necessities that arise from the medical condition, frailty, or similar special needs of the community spouse. Such necessities include, but are not limited to, special remedial and support services and extraordinary uncovered medical expenses.** Such expenses generally **do not include car payments**, even if the car is used for transportation to medical appointments, **or home-maintenance expenses such as security systems and lawn care.**

(a) In determining an increased MMMNA, the fair-hearing officer ensures that no expense (for example, for food or utilities) is counted more than once in the calculation.

(b) If the community spouse lives in an assisted-living facility or similar facility and requests an increase in his or her minimum-monthly-maintenance-needs allowance, the fair-hearing officer reviews the housing agreement, service plan, fee schedule, and other pertinent documents to determine whether exceptional circumstances exist. Additional amounts are allowed only for specific expenses necessitated by exceptional circumstances of the community spouse and not for maintaining any pre-set standard of living.

(2) Determination of Increase for Exceptional Circumstances. If the fair-hearing officer determines that exceptional circumstances exist, the fair-hearing officer may increase the community spouse's MMMNA to meet the expenses caused by the exceptional circumstances as follows.

(a) The fair-hearing officer first verifies that the calculation of the gross income of the community spouse in determining the existing spousal-maintenance-needs deduction includes the income generated by the community spouse's asset allowance. If the community spouse has no assets remaining from the allowance, he or she must verify the dollar amount of the remaining assets, if any, and how the money was spent. The fair-hearing officer considers how the assets were spent in determining whether or not significant financial duress exists.

(b) The fair-hearing officer determines the revised MMMNA by including in the calculation the amount needed to meet the exceptional circumstances.

(c) The fair-hearing officer compares the revised MMMNA to the community spouse's total income. If the community spouse's total income is less than the amount of the revised MMMNA, the fair-hearing officer first deducts the personal-needs allowance from the institutionalized spouse's countable-income amount and then a spousal-maintenance-needs

deduction needed to reach the revised MMMNA.

130 CMR 520.017(D) (emphasis added).

The appellant has not submitted evidence that supports an increase to the MMMNA above the regulatory maximum. Even if the appellant had submitted evidence that a ramp was being built, it was confirmed that the ramp was for the appellant's benefit and not for the community spouse's benefit. An adjustment to the MMMNA may only be allowed where "exceptional circumstances ... result in significant financial duress," and these "exceptional circumstances are limited to those necessities that arise from the medical condition, frailty, or similar special needs **of the community spouse.**" 130 CMR 520.026(D)(1) (emphasis added). There is no evidence in the record regarding financial duress arising from the community spouse's exceptional circumstances, therefore MassHealth correctly determined that the appellant's spouse is not entitled to keep any of the appellant's income in the form of an SMNA, and this appeal is DENIED.

I note that 130 CMR 520.026(E) allows for deductions arising from the appellant's health-care coverage and other medical expenses. However, this deduction only covers "deductions for the applicant's necessary medical and remedial-care expenses" that have already been incurred.<sup>4</sup> It is unclear whether a ramp would rise to the level of "necessary medical and remedial-care," but this issue is irrelevant as the appellant has not submitted any evidence of incurred expenses.

## Order for MassHealth

None.

## Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

---

Christopher Jones  
Hearing Officer

---

<sup>4</sup> These expenses must also be "certified by a treating physician or other medical provider as being medically necessary." 130 CMR 520.026(E)(2)(b)(ii).